

INTERNAL REVENUE SERVICE
SOUTHWEST REGION

DEPARTMENT OF THE TREASURY
APPEALS OFFICE

Date: APR 29 1993

Person to Contact:

Telephone Number:

Refer Reply to:

Tax Period:
All Years

Dear Sir or Madam:

We have considered your appeal of the adverse action proposed by your Key District Director. Your request for exemption from Federal income tax under section 501(c)(7) of the Internal Revenue Code is denied.

You are required to file income tax returns on Form 1120 for the above years. You should file these returns with the Service Center within 30 days from the date of this letter, unless a request for extension of time is granted.

You may direct questions about the decision to the Appeals Officer whose name and telephone number are shown above.

Sincerely,

Associate Chief, Appeals

CC:

Internal Revenue Service

Department of the Treasury

District
Director

Date: OCT 1 1992

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(7) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the non-profit laws of the state of [REDACTED]. Your purposes as set forth in your Articles of Incorporation are as follows:

This corporation is organized to conduct any and all lawful affairs for which a non-profit corporation may be incorporated under the laws of the State of [REDACTED] as they may be amended from time to time, and specifically to provide a higher quality of RV living at a lower cost than is possible with rental or private ownership; to form a community of people based on the national [REDACTED]'S concept of "sharing and caring"; to provide a place for members of the [REDACTED] to park, free of charge, in a self-contained recreational vehicle while in or traveling through [REDACTED], all in compliance of the Internal Revenue Code Section 501(c)(3) governing non-profit corporations.

Your organization purchased [REDACTED] acres in [REDACTED], to provide its members with an exclusive use recreational vehicle park with leasehold lots for its members. You developed the property into [REDACTED] RV lots with recreational building, office, maintenance building and paved streets.

An individual becomes a member of your organization by signing a lifetime real estate lease and paying an initial fee of \$[REDACTED] to purchase a leasehold interest in a lot at your parks. The recreational facilities can be used by all individuals using your RV park. Your organization also conducts social and recreational functions.

[REDACTED]

When a member terminates his membership whether voluntary or involuntary, re-assignment of his leasehold interest is transacted through your organization. The member will receive his original investment in the lot, plus any pro-rated assessments, minus any fees due. This member will also receive consideration for any improvements to the lot. Upon the death of a member, the proceeds will revert to the leaseholder's estate.

When a member is not using his lot, it can be rented to non-members who belong to similar RV parks. Your organization receives the rental income from the non-members. Your organization keeps [REDACTED]% of the rental income for an improvement fund. The remaining [REDACTED]% is credited to the members account for his annual maintenance fee. Your by-laws state each member is encouraged to rent his lot to other [REDACTED] as a means of generating funds to offset the operating costs of the Co-Operative.

The financial information you submitted for your year ending [REDACTED] shows \$[REDACTED] non-member income from space rents and \$[REDACTED] in total income, which equals [REDACTED]% non-member income.

Your [REDACTED] year shows \$[REDACTED] non-member rental income, plus \$[REDACTED] investment income, for a total of \$[REDACTED]. You listed \$[REDACTED] in total receipts, which would equal [REDACTED]% non-member and investment income for that year.

The income amounts you submitted for your [REDACTED] year through [REDACTED], reveals that [REDACTED]% is from non-member sources.

Section 501(a) of the Code provides that an organization described in subsection (c) or ... "Shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 and 503 (which are not applicable).

Section 501(c)(7) of the Internal Revenue Code provides exemption for:

"Clubs organized for pleasure, recreation and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder."

Section 1.501(c)(7)-1(b) of the income Tax Regulations states that:

"...Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business..."

Section 1.501(c)(7)-1 of the Regulations provides, in part, as follows:

(a) The exemption provided by section 501(a) for organizations described in section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities."

(b) A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate, timber, or other products, is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt under section 501(a). Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

Revenue Ruling 68-168, 1968-1 C.B. 269, holds that a nonprofit organization that acquired substantial acreage and, after developing recreational facilities on a portion thereof, subdivided the remaining land into building lots which it leases to members for ninety-nine years; is not exempt from Federal income tax under section 501(c)(7) of the Internal Revenue Code.

Revenue Procedure 71-17, 1971-1 C.B. 683, provides guidelines for determining the effect of gross receipts derived from nonmember use of a social club's facilities on the club's exemption under section 501(c)(7) of the Code. Rev. Proc. 71-17 states that where a club makes its facilities available to the general public to a substantial degree, the club is not operated exclusively for pleasure, recreation, or other nonprofitable purposes. The term "general public," as used in that Revenue Procedure, means persons other than members of a club, their dependents, or guests.

A guest of a nonprofit social club is an individual who is a guest of a member of the club and who ordinarily does not reimburse the member for the guest's expenses. On the other hand, amounts paid to a social club by visiting members of another social club are amounts paid by nonmembers, even though both clubs are of like nature and the amounts paid are for goods, facilities, or services provided by such social club under a reciprocal arrangement with such other social club.

[REDACTED]

Public Law 94-568 effected the regulations in that the terms, "solely" and "exclusively" should be replaced by "substantially" and "mostly". Also, the Committee Report on Public Law 94-568 sets out a maximum percentage test of 15% for nonmember and 35% for nonmember and investment income. The Committee Report states that if an organization has outside income in excess of the 35% limit (or the 15% limit indicates that gross receipts derived from nonmember's use of a club's facilities), all the facts and circumstances are to be taken into account in determining whether the organization qualifies for exempt status.

Revenue Ruling 69-220, 1969-1 C.B. 154, holds that a social club that receives a substantial portion of its income from the rental of property and uses such income to defray operating expenses and to improve and expand its facilities is not exempt under section 501(c)(7) of the Code.

Your activities consist of operating a recreational vehicle park, to provide lower cost RV living for your members by leasing lots to them on a lifetime basis. The subdividing and leasing of these lots is almost identical to the activities conducted by the organization described in Revenue Ruling 68-168. Conducting such real estate leasing is not a recreational activity, but constitutes engaging in a business.

You encourage your members to rent out their lots to non-members who belong to a national organization, [REDACTED]. Our records do not list this corporation as being exempt from Federal income tax. Revenue Procedure 71-17 describes the term "general public" persons other than members of a club, their dependents, or guest. Nonmembers who reimburse the member or pay their own fees for the use of club facilities are not considered a guest of the member.

Public Law 94-568 limits the percentage of non-member income to 15%, and 35% for nonmember plus investment income. you have exceeded the 15% limit each year and the 35% limit in your second year.

In Revenue Ruling 69-220 the organization receives a substantial portion of its income from rental income. At this point you receive about [REDACTED] of your income from nonmember rent; but like the organization in the revenue ruling, part of this rent is used directly for improvements to your facility. The rest of the rent is credited to the member's annual maintenance fee.

[REDACTED]

Crediting the income against the member's liability for maintenance fees constitutes taxable income in that he is enabled to avoid expenses and is thus inurement to his benefit.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018